In the High Court of Punjab and Haryana at Chandigarh.

F.A.O.No.5295 of 2005.

Date of decision:6.12.2006.

Ravinder Singh.

...Appellant.

Versus

Manmohan Lal.

...Respondent.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.M.S.Bedi Advocate for the appellant.

Mr.R.K.Joshi Advocate for the respondent.

...

Judgment.

S. N. Aggarwal, J.

Elections of Municipal Councillor of Ward No.13, Dasuya had taken place on 9.3.2003. Ravinder Singh appellant and Manmohan Lal respondent were the contesting candidates. After the votes polled were counted, the following result was declared:-

Ravinder Singh appellant	432 votes.
Manmohan Lal,respondent	433 votes.
Cancelled votes.	26.

Since Ravinder Singh appellant got one vote more than respondent No.1,therefore, he was declared elected.

Manmohan Lal, respondent filed Election Petition. One of the objections raised in the Election Petition was that somebody else had allegedly voted at serial number 925 against which Mrs.Neelam was registered as a voter. When she appeared to poll her vote, it was considered to be a tendered vote. The said tendered vote was liable to be counted before declaring the result. The second objection was that 26 votes have been cancelled by the Presiding Officer without recording reasons. Some valid votes have also been treated as invalid while some invalid votes were counted in favour of the elected candidate. Hence, it was prayed that the election of Ravinder Singla,appellant be set aside.

The appellant filed written reply and contested the case. The allegations were denied. It was re-asserted that the tendered vote could not be counted and invalid votes were rightly rejected.

Issues were framed.

Manmohan Lal respondent examined Rajesh Kumar, Clerk, Office of Sub Divisional Magistrate Dasuya, as PW-1, Raj Kumar, Presiding Officer was examined as PW-2 while the respondent himself appeared as PW-3.

On the other hand, the appellant examined Harbhajan Kaur, Clerk, Office of Deputy Commissioner as RW-1, Satnam Singh as RW-

2, Gurmej Singh as RW-3, Harbhajan Sigh as RW-4, Kishan Gopal as RW-5, Balbir Singh as RW-6, Khan Chand as RW-7 while the appellant himself appeared as RW-8.

Some orders were passed by the Election Tribunal and the matter had reached this Court also but the learned counsel for both the parties agreed that ultimately the learned Election Tribunal was to re-examine only the invalid votes to find out its correctness besides considering the tendered vote.

The learned Election Tribunal re-examined 26 votes which were declared as invalid and it was found that one of those 26 votes was a valid vote which was polled in favour of Manmohan Lal, respondent. The tendered vote was also counted which was polled in favour of Manmohan Lal respondent. As a result, the polled votes in favour of Manmohan Lal respondent came to be 434 while the polled votes of Ravinder Singh remained at 433. Therefore, the Election Petition was accepted by the learned Election Tribunal vide order dated 25.10.2005. Since Manmohan Lal had secured one vote more than the votes secured by the appellant,therefore, he was declared elected by setting aside the election of Ravinder Singh.

Hence, the present appeal by Ravinder Singh

The submission of learned counsel for the appellant was that vote polled by Neelam registered voter at serial number 925 was kept separately and was treated as a tendered vote. Reference was made

to Rule 33 of the Punjab Municipal Election Rule,1952 which deals with the tendered votes. It reads as under:-

> "33. Tendered votes (1) If a person representing himself to be a particular elector applies for a ballot-paper after another person has already voted as such elector, he shall, on satisfactorily answering such questions relating to his identity as the President Officer may ask,be entitled, subject to the following provisions of this rule, to mark a ballot paper (hereinafter in these rules referred to as a "tendered ballot paper") in the same manner as any other elector.
>
> (2)xx xx xx
>
> (3) xx xx xx
>
> (4)xx xx xx "

It was also submitted that according to the case pleaded by the appellant somebody else had polled the vote in place of Neelam who was registered voter at serial number 925. Hence, it was submitted that since somebody else had polled the vote in place of Neelam at serial number 925 then one vote has to be taken out before taking into account the tendered vote. It was then submitted that admittedly the vote polled by Neelam was a tendered vote. Therefore, that vote could be counted as a valid vote only if one vote polled earlier by somebody else in her place was taken out of counting.

On the other hand, the submission of learned counsel for

the respondent was that according to the admitted case of the appellant, Neelam herself had polled her vote about one or two hours earlier. Then she had re-appeared and tried to caste her vote. Hence, even according to the admitted case of the appellant, nobody else had polled the vote at serial number 925 except Neelam herself. It was further submitted that no vote was found having been polled at serial number 925 and,therefore, the said tendered vote has been rightly counted by the learned Election Tribunal without taking out one vote from the Ballot Box out of consideration.

Before dealing with this argument, it would be necessary to deal with the pleadings of the parties before the Election Tribunal on this aspect. It was pleaded by Manmohan Lal respondent as under:-

> "That election of respondent is liable to be set aside and declared void on the following grounds:-
>
> (i)That voter namely Neelam wife of Chinder Kumar whose vote is registered at Sr.No.925 of the voting list,when came to cast her vote, it was found that her vote at the said Serial No.925 had already been polled by some body else. The Presiding Officer after satisfying about the identity of Neelam wife of Chinder Kumar allowed her to vote as per procedure under Rule 63 of Punjab Municipal Election Rules,1994 and her vote was kept separately as 'TENDERED VOTE". However, the said vote was not

counted at the time of counting inspite of the fact that difference of votes polled to petitioner and respondent was only one vote. The said vote is liable to be counted before the result could be declared and the result of election has been materially affected by the refusal of counting of the said vote."

This paragraph was replied by Ravinder Singh appellant as under:-

"3. That para no.3 of the petition is wrong and denied. The sub para reply is as under:

(i) It is correct that the name of Chinder Kumar son of Khan Chand and Neelam wife of Chinder Kumar exist at serial number 924 and 925. The actual facts are that the name of Chinder Kumar is Surinder Kumar son of Bansi Lal and Neelam w/o Surinder Kumar. These two persons have their votes at serial no.460 and 461. Kahan Chand is the relative of the petitioner. The petitioner with connivance of Kahan Chand got entered the name of Surinder Kumar s/o Bansi Lal as Chinder Kumar s/o Khan Chand and Neelam w/o Surinder Kumar as Neelam w/o Chinder Kumar at serial No.924 and 925 in the voter list of Ward No.13 of Dasuya. Actually these persons are residents of w/m 287, Gali No.3, Basti Guzan, Jalandhar.

On 9/3/2003 Neelam who appears at serial no.925 cast her vote and after about one hour when she again came to cast her vote, the objection was raised by the respondent that Neelam had already cast the vote and she could not be allowed to cast her vote again. However, as there was dispute, the SDM Dasuya came at the spot and at his instance the Presiding Officer declared that voter has tendered vote. Chinder Kumar and Neelam had no right to get themselves entered in the voter list of Corporation, Jalandhar City. It is submitted that appropriate prosecution be made against Kahan Chand, Manmohan Lal petitioner, Chinder Kumar and Neelam who appeared in the voter list at serial no.924 and 925. Surinder Kumar and Neelam has no right to get themselves entered in the voter list as Chinder Kumar and Neelam in the voter list at Dasuya."

Even by leading evidence, the appellant while appearing as RW-8 has stated that Neelam had polled her vote. She had re-appeared and tried to re-poll her vote. An objection was raised. S.D.M. had appeared at the spot and her vote was considered as the tendered vote. His witnesses have also made similar statements. Manmohan Lal PW-3 has only deposed that when Neelam came to poll her vote, it was found that the vote registered at serial number 925 was already polled.

Therefore, her vote was taken as tendered vote.

Therefore, whatever was the stand taken by both the parties but the common point between the two was that the vote at serial number 925 was in fact already polled before Neelam appeared on the scene to poll her vote at serial number 925 and her vote was taken as tendered vote. Admittedly, the polling agents of both the parties were sitting in the polling hall. Neelam was the voter at serial number 925. If somebody else had come to poll the vote impersonating Neelam,then the polling agents of both the parties would have raised objections as the said voter was not the real voter registered at serial number 925. None of the parties has taken the plea if any objection was raised by them when somebody else had come to poll the vote registered at serial number 925 in the name of Neelam. It obviously means,therefore, that none else had come to poll the vote registered at serial number 925 in the name of Neelam.

Similarly, it is also admitted by both the parties that after entering the polling hall, ink mark is affixed on the finger of the voter who polled his or her vote and that mark survives for two or three days. It has also been so stated by Raj Kumar, PW-2 who was the Presiding Officer of these elections. If Neelam had come to vote one hour earlier and had polled her vote as pleaded by the appellant, then there would have been some ink mark on her finger. When she had come allegedly after after one hour and had tried to poll the vote allegedly again, then

an objection was raised that vote at serial number 925 had already been polled. If actually the vote was earlier polled by Neelam then the polling agents of both the parties could have pointed out the ink mark on her finger. There is no such plea taken by any of the parties, if there was any ink mark on the finger of Neelam.

When she appeared allegedly to re-poll the vote at serial number 925, then the Presiding Officer would have seen any such mark on her finger but there is no note to that effect if any such ink mark existed on any of her fingers. This clearly rules out the possibility if Neelam had polled the vote at serial number 925 one or two hours before she allegedly re-appeared to poll the vote again. This, therefore, rules out if any vote was polled at serial number 925 and, therefore, she had come for the first time when her vote was considered as a tendered vote. The above discussion reveals that neither any other person had polled the vote in place of Neelam at serial number 925 nor Neelam had polled her vote at serial number 925 one hour before she appeared on the scene and when her vote was considered as a tendered vote.

It appears that the confusion arose because of the reason that on the voters list, serial number 925 on which Neelam was registered as a voter was already ticked when Neelam appeared to cast her vote. The ticking at serial number 925 in the voters list indicated that the vote at this serial number had already been polled. Admittedly, when Neelam came to poll her vote, there was ticking on voters list at

her serial number and it was presumed that somebody else had already polled the vote.

The statement of Raj Kumar, Presiding Officer, PW-2 removes this confusion. He has deposed in his statement that at serial number 924, the name of Chinder Kumar husband of Neelam is mentioned and at serial number 924, the vote was not polled. He further deposed that the counter foil of the ballot paper issued to the person who had polled vote at serial number 925 was not available. He further deposed that there was no entry for the issuance of ballot paper at serial number 925. He further deposed that the votes polled tallied with the votes having been polled indicated in the voters list.

Since the counter foil of the ballot paper registered at serial number 925 was not found and there was no record regarding the issuance of ballot paper to any person registered at serial number 925, it clearly leads to the conclusion that no vote was in fact polled by any person in place of the voter registered at serial number 925. It appears that ticking of serial number 925 in the voters list has taken place inadvertently in place of ticking of the name of some other voter registered at some other serial number. The parties as well as polling staff took the impression that since there was ticking of serial number 925, therefore, her vote has been polled.

It is, therefore, held that actually none had polled the vote in place of Neelam who was a registered voter at serial number 925

prior to her appearance in the polling station and because of wrong ticking of her serial number, her vote was considered to be a tendered vote.

Since none had polled the vote in place of Neelam at serial number 925, therefore, the tendered vote of Neelam was to be taken into consideration while counting the votes without excluding any vote from the Ballot Box. The learned Election Tribunal has also reached the conclusion that since none had polled the vote registered at serial number 925, therefore, the tendered vote has to be taken into consideration for recounting purposes.

It was faintly argued by the learned counsel for the appellant that he did not agree with the counting of one vote in favour of the respondent out of 26 rejected votes which has not been done by the Election Tribunal in accordance with law. As observed by the Election Tribunal in the impugned order, the re-checking of invalid votes had taken place in the presence of both the parties and their counsel and it was found that one vote considered as invalid was actually found to be valid and it was found having been polled in favour of the respondent. Therefore, one vote out of 26 rejected votes which were polled in favour of the respondent was rightly taken into consideration by the Election Tribunal.

Since after re-checking of invalid votes, one vote was found valid which was polled in favour of the respondent and after

taking into consideration the tendered vote,the respondent got two more votes, therefore, in net result, he got one vote more than the votes polled in favour of the appellant. Accordingly, the election of the appellant was set aside by the learned Election Tribunal vide impugned order dated 25.10.2005 by accepting the election petition and the respondent was declared as elected as a Municipal Councillor of Ward No.13, Dasuya.There is no legal infirmity in the impugned order.

There is no force in this appeal and the same is dismissed.

December 6,2006. (S. N. Aggarwal)
Jaggi Judge